

RICHARD W. KULIS

IBLA 82-1260

Decided April 27, 1983

Appeal from decision of Eastern States Office, bureau of Land Management, rejecting noncompetitive oil and gas offer. ES-30183.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Rentals

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his first year's advance rental payment within 30 days after receipt of notice, as prescribed by 43 CFR 3112.4-1(a), his application must be rejected.

2. Evidence: Presumptions -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Rentals

Where there is no evidence of receipt of a check, in payment of the first year's advance rental pursuant to 43 CFR 3112.4-1(a), the presumption that BLM employees have properly discharged their duties and not lost or misplaced the check is not overcome by evidence that the check was received where the applicant submits an affidavit that the check was enclosed in the same envelope with other documents that were received by BLM and includes a copy of his personal checkbook register showing that a check was issued to BLM but not cashed.

APPEARANCES: Richard W. Kulis, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Richard W. Kulis has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated July 20, 1982, rejecting his noncompetitive oil and gas lease offer, ES-30183.

Appellant's simultaneous oil and gas lease application was drawn with first priority for parcel ES-220 in the September 1981 simultaneous oil and gas lease drawing. By notice dated November 24, 1981, appellant was required to submit the first year's advance rental payment of \$400 and the completed lease offer forms "within thirty (30) days from receipt of this notice," in accordance with 43 CFR 3112.4-1(a). Appellant received the notice on November 27, 1981. On December 4, 1981, BLM received the completed lease offer forms in an envelope postmarked December 1, 1981. In its July 1982 decision, BLM rejected appellant's noncompetitive oil and gas lease offer because appellant had failed to submit timely the first year's advance rental payment. BLM stated that no check was included with the December 1981 submission of the completed lease offer forms and that "[a] later search of our records provided no evidence of the check ever being received."

In his statement of reasons for appeal, appellant asserts that he mailed a check for the first year's advance rental payment to BLM with the completed lease offer forms. Appellant states that "all items" were sent by certified mail, return receipt requested (article No. 6362440). He also submitted a copy of a page from his checkbook register which indicates that a check for \$400 was made out to BLM on December 1, 1981 (No. 3694), which he states has never cleared his bank. Appellant submits a copy of a return receipt card for article No. 6362440, which indicates that the article was received on December 4, 1981, and signed for by Rosa Robinson, a BLM employee.

[1] It is well established that failure to submit the first year's advance rental payment within the required time period, in accordance with 43 CFR 3112.4-1(a), will result in rejection of a noncompetitive oil and gas lease offer, pursuant to 43 CFR 3112.6-1(d). 1/ Kenneth R. Lewis, 70 IBLA 112 (1983), and cases cited therein. BLM has no authority to consider excuses for a late payment or to exercise discretion to accept a late payment under 43 CFR 1821.2-2(g), because of the intervening rights of the second- and third-priority applicants. Beverly J. Macdowell, 71 IBLA 23 (1983), and cases cited therein.

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[2] Appellant contends that he mailed a check for the appropriate rental amount to BLM with his completed lease offer forms, which were received within the required time period. He argues that BLM must have lost or misplaced the check. However, there is a legal presumption of regularity which supports the official acts of public officers in the proper discharge of their official duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976). In this particular context, it is presumed that BLM employees have properly discharged their duties and not lost or misplaced legally sufficient documents filed with them. R. E. Frasch, 69 IBLA 66 (1982); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). The presumption is dictated by considerations of public policy. Bernard S. Storper, 60 IBLA 67 (1981), aff'd, Storper v. Watt, Civ. No. 82-0449 (D.D.C. Jan. 20, 1983).

The presumption of regularity may be rebutted by sufficient probative evidence that the particular document in contention was not only transmitted

1/ 43 CFR 3112.6-1(d) provides that: "The application of the first-qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4-1 of this title."

but actually received by BLM. Bernard S. Storper, supra. An uncorroborated statement, even in the form of an affidavit, to the effect that a document was included in a mailing together with other documents that were received by BLM has long been held to be insufficient to overcome the inference that the document was not filed, arising from the absence of the document from the file. R. E. Frasch, supra, and cases cited therein. Moreover, the inference will not be overcome even where an appellant submits proof that a submission was made, e.g., a return receipt card. Lawrence D. Dye, 57 IBLA 360 (1981); John Walter Starks, 55 IBLA 266 (1981). The reason is that while it is not doubted that a submission was made, there is no evidence that the particular document was included. Appellant relies on his checkbook register to establish that a check for the appropriate amount was made out to BLM on the date he mailed the lease offer forms to BLM, December 1, 1981. Appellant, however, has provided no evidence that the check was included in the envelope mailed to BLM. We do not doubt that a check was made out to BLM and that it is still uncashed. However, it is just as likely that the check was misplaced by appellant as by BLM. In order to overcome the presumption of regularity, there must be convincing and uncontradicted evidence "which clearly and distinctly establishes a fact, so that reasonable minds can draw but one inference." (Emphasis added.) John Walter Starks, supra at 270, citing Falstaff Brewing Corp. v. Thompson, 101 F.2d 301 (8th Cir.), cert. denied, 302 U.S. 709 (1939). In the present case, two inferences can be drawn of equal weight. In Starks, we concluded that the presumption was not rebutted by an affidavit of the employee who made the relevant submission, stating that the required agency statement had been included in the mailing, and a couriers' invoice indicating receipt of the submission by a BLM employee, even where the appellant submitted a contemporaneous record, in the form of a "check list," which "indicates that all procedures [including submitting all required documents] were completed." John Walter Starks, supra at 268. These facts are closely analogous to the situation herein. Accordingly, we conclude that appellant has failed to overcome the presumption of regularity. BLM properly rejected appellant's noncompetitive oil and gas lease offer for failure to submit timely the first year's advance rental payment, pursuant to 43 CFR 3112.4-1(a).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge.

